

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a Washington
corporation,

Plaintiff,

v.

MOTOROLA, INC., MOTOROLA
MOBILITY, INC., and GENERAL
INSTRUMENT CORPORATION.,

Defendants.

CASE NO. C10-1823-JLR

MOTOROLA MOBILITY'S AND
GENERAL INSTRUMENT'S MOTION TO
FILE DOCUMENTS UNDER SEAL IN
SUPPORT OF MOTOROLA MOBILITY'S
AND GENERAL INSTRUMENT'S REPLY
TO MOTOROLA'S DAUBERT MOTION

**NOTE ON MOTION CALENDAR:
Friday, September 21, 2012**

I. INTRODUCTION

Pursuant to Western District of Washington Civil Local Rule CR 5(g)(2), Defendants Motorola Mobility, Inc. and General Instrument Corporation (collectively “Motorola”) respectfully move this Court for leave to file under seal Motorola Mobility’s and General Instrument’s Reply to Motorola’s *Daubert* Motion (“Reply”).

II. BACKGROUND

Microsoft Corporation (“Microsoft”) and Motorola entered into a stipulated Protective Order, which was approved by the Court on July 21, 2011. (Dkt. No. 72.) This Protective Order outlines categories of material that should be maintained in confidence, along with procedures for sealing confidential material when included in documents filed with the Court. Specifically, paragraph 1 specifies that:

Confidential Business Information is information which has not been made public and which concerns or relates to the trade secrets ... amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, the disclosure of which information is likely to have the effect of causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained....

Id. at 1-2. This information should be marked as “CONFIDENTIAL BUSINESS INFORMATION, SUBJECT TO PROTECTIVE ORDER.” *Id.* at 2. Additionally, paragraph 6 specifies that:

(1) Confidential Business Information pertaining to licensing or other commercially sensitive financial information shall not be made available under this paragraph 6 to such designated in-house counsel; the supplier shall designate such Confidential Business Information pertaining to licensing or other commercially sensitive financial information as “[SUPPLIER’S NAME] CONFIDENTIAL FINANCIAL INFORMATION – OUTSIDE ATTORNEYS’ EYES ONLY – SUBJECT TO PROTECTIVE ORDER” and promptly provide a redacted version of such document that may be disseminated to the two in-house counsel designated under this paragraph 6....

Id. at 4. Finally, Paragraph 2 of the Protective Order governs the sealing of documents, and states in relevant part that:

During the pre-trial phase of this action, such information, whether submitted in writing or in oral testimony, shall be disclosed only *in camera* before the Court

1 and shall be filed only under seal, pursuant to Rule 5(g) of the Local Civil Rules
2 of the United States District Court for the Western District of Washington.

3 *Id.* at 2.

4 Thus, the Protective Order provides that Motorola may request to seal documents by
5 formal motion pursuant to Rule 5(g) of the Local Civil Rules of the Western District of
6 Washington. Local Rule CR 5(g)(3) states that:

7 If a party seeks to have documents filed under seal and no prior order in the case
8 or statute specifically permits it, the party must obtain authorization to do so by
9 filing a motion to seal or a stipulation and proposed order requesting permission
10 to file specific documents under seal. The court will allow parties to file entire
11 memoranda under seal only in rare circumstances. A motion or stipulation to seal
usually should not itself be filed under seal. A declaration or exhibit filed in
support of the motion to seal may be filed under seal if necessary. If possible, a
party should protect sensitive information by redacting documents rather than
seeking to file them under seal. A motion or stipulation to seal should include an
explanation of why redaction is not feasible.

12 Similarly, federal law recognizes that courts should protect trade secrets or other
13 confidential commercial information by reasonable means, permitting the filing under seal of
14 documents containing such information. *See* Fed. R. Civ. P. 26(c)(1)(G) and (H) (stating that a
15 court may require that (1) “a trade secret or other confidential research, development, or
16 commercial information not be revealed or be revealed only in a specified way” and (2) “the
17 parties simultaneously file specified documents or information in sealed envelopes...”).

18 Though courts recognize a general right to inspect and copy public records and documents,
19 including judicial records, the United States Supreme Court has stated that this right is limited.
20 “[T]he right to inspect and copy judicial records is not absolute. Every court has supervisory
21 power over its own records and files, and access has been denied where court files might have
22 become a vehicle for improper purposes.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598
23 (1978). In discussing examples of improper purposes, the Court indicated that courts are not to
24 serve as “sources of business information that might harm a litigant’s competitive standing.” *Id.*

25 As the Ninth Circuit stated:

26 The law, however, gives district courts broad latitude to grant protective orders to
prevent disclosure of materials for many types of information, including, but not

1 limited to, trade secrets or other confidential research, development, or
 2 commercial information. See Fed. R. Civ. P. 26(c)(7). Rule 26(c) authorizes the
 3 district court to issue “any order which justice requires to protect a party or
 4 person from annoyance, embarrassment, oppression, or undue burden.” The
 Supreme Court has interpreted this language as conferring “broad discretion on
 the trial court to decide when a protective order is appropriate and what degree of
 protection is required.” *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984).

5 *Phillips v. General Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002).

6 **III. THE PROTECTIVE ORDER BOTH PERMITS AND REQUIRES MOTOROLA**
 7 **TO FILE THIS MOTION FOR LEAVE TO SEAL**

8 In accordance with the Protective Order and the above-referenced authority, Motorola
 9 moves to file the following documents under seal for the stated reasons:

10 **A. Motorola Mobility’s and General Instrument’s Reply to Motorola’s *Daubert* Motion**

11 Motorola respectfully requests that its Reply be filed under seal because of extensive
 12 citation to, and description of: (1) expert reports filed in this action by Microsoft’s expert
 13 witnesses, which Microsoft has designated as “MICROSOFT/MOTOROLA CONFIDENTIAL
 14 BUSINESS INFORMATION OUTSIDE ATTORNEY’S EYES ONLY – SUBJECT TO
 15 PROTECTIVE ORDER”; (2) expert reports filed in this action by Motorola’s expert witnesses,
 16 which Motorola has designated as “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY”;
 17 (3) confidential deposition testimony from this action; and (4) Motorola’s and Microsoft’s various
 18 *Daubert* Motions and Oppositions, portions of which have similarly been filed under seal.
 19 Because this information is contained in the Reply, and in accordance with its responsibilities
 20 under the Protective Order, Motorola has marked this document as containing “OUTSIDE
 21 ATTORNEYS’ EYES ONLY – SUBJECT TO PROTECTIVE ORDER.” In lieu of sealing the
 22 entire Reply, Motorola has redacted only those portions of its brief that disclose this confidential
 23 information. Redactions were made to limit as little information as possible, leaving the
 24 remainder available for public review.

1 **IV. CONCLUSION**

2 For the foregoing reasons, Motorola respectfully requests that this Court order that
3 Motorola Mobility's and General Instrument's Reply to Motorola's *Daubert* Motion be filed under
4 seal.

5 DATED this 10th day of September, 2012.

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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 10th day of September, 2012.

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